

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NIGEL LEE WHITTAKER,

Petitioner,

v.

Civil Action Number: 2:10-cv-11051
Honorable Denise Page Hood

MICHAEL CURLEY,

Respondent.

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**ORDER DENYING PETITIONER'S
MOTIONS FOR DISCOVERY AND ORAL ARGUMENT**

Michigan prisoner Nigel Lee Whittaker, presently incarcerated by the Michigan Department of Corrections at the Baraga Maximum Correctional Facility in Baraga, Michigan, filed a *pro se* Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 on March 16, 2010. Before the Court now are Petitioner's "Motion for Request or Discovery" [Dkt. # 24] and "Motion for Oral Argument" [Dkt. # 25]. For the reasons stated, the Motions will be denied.

I. Motion for Request or Discovery

"A habeas petitioner, unlike the usual civil litigant, is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904, 117 S.Ct. 1793 (1997). Instead, a habeas petitioner is entitled to discovery if the district judge "for good cause, authorize[s] a party to conduct discovery under the Federal Rules of Civil Procedure []." Rule 6 Governing Habeas Corpus Cases Under Section 2254, 28 U.S.C. foll. § 2254. To establish "good cause" for discovery, a habeas petitioner must establish that the requested discovery will develop facts which will enable him or her to demonstrate that he or she is

entitled to habeas relief. See *Bracy*, 520 U.S. at 908-09, 117 S.Ct. at 1799. The burden is on the petitioner to establish the materiality of the requested discovery. See *Stanford v. Parker*, 266 F.3d 442, 460 (6th Cir. 2001).

In this case, Petitioner is requesting all witness statements, all police reports, any medical reports, any scientific and laboratory reports, and the pre-sentence investigation report. In this case, Respondent's Answer and the Rule 5 materials were filed on April 6, 2012, and April 24, 2012, respectively. Until this Court reviews the Habeas Petition, Respondent's Answer to the Habeas Petition, and Petitioner's Reply Brief, "it is impossible to evaluate what, if any, discovery is needed and whether the discovery is relevant and appropriately narrow." *Gengler v. United States ex rel. Dep't of Defense & Navy*, 463 F. Supp. 2d 1085, 1114-15 (E.D. Cal. 2006); see also *Shaw v. White*, No. 99-cv-75322-DT, 2007 WL 2752372, at *3 (E.D. Mich. Sept. 21, 2007) (Tarnow, J.) (same). In addition, none of the Rule 5 materials have been reviewed by the Court, and review "of those materials may obviate the need to order discovery." *Shaw*, 2007 WL 2752372, at *3. Granting Petitioner's discovery request at this time would be premature. Therefore, the Motion for Request or Discovery will be denied without prejudice. *Id.* No additional Motions need to be filed with respect to this issue.

II. Motion for Oral Argument

Petitioner requests oral argument because he believes his Habeas Petition raises interesting issues such that they require oral argument so the Court may benefit and the interests of justice are served. Although courts do not typically grant oral argument when a party is in custody, a court has discretion to do so. See E.D. Mich. L.R. 7.1(f)(1).

As stated, Respondent's Answer and the Rule 5 materials were filed on April 6, 2012, and April 24, 2012, respectively. The Court has not yet had an opportunity to review those documents. If after reviewing those materials, as well as any Responsive filings from Petitioner, the Court believes oral argument would be beneficial, then it will be scheduled. However, it would be premature to schedule oral argument at this time. Accordingly, the Court will deny the Motion for Oral Argument without prejudice. No additional Motions need to be filed with respect to this issue.

III. Conclusion

For the reasons stated above, Petitioner's Motion for Request or Discovery [Dkt. # 24] and "Motion for Oral Argument [Dkt. # 25] are DENIED WITHOUT PREJUDICE.

SO ORDERED.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: May 10, 2012

I hereby certify that a copy of the foregoing document was served upon Nigel Whittaker #375383, 13924 Wadaga Road, Baraga, MI 49908 and counsel of record on May 10, 2012, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager